



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** SIMCO, Inc.

**File:** B-229964

**Date:** April 19, 1988

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### **DIGEST**

1. Agency evaluation of price proposals, which gives the maximum number of points to the lowest priced offer and zero points to all others, regardless of price, is improper because it is inconsistent with a statement that cost be given a weight of 20 percent of total evaluation.
2. An award on the basis of initial proposals without discussions is proper only where notice of this possibility is provided in the request for proposals. Also, where there is at least one lower-priced acceptable offer which would be in the competitive range, an award may not be made without discussions.

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### **DECISION**

SIMCO, Inc., protests the award of an indefinite quantity contract under request for proposals (RFP) ASCS-RFP-15-87DC, issued by the Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA). The RFP is for the supply of educational services and related training manuals and materials for instructing USDA employees in the use of a new computer system. SIMCO contends that it is entitled to the award.

We deny the protest.

The RFP provided that award would be made "in the aggregate to the responsive and responsible offeror whose offer represents the highest number of total points." Evaluations were to be based on 1,000 total points divided among the following factors and percentages: cost, 20 percent; documentation, 25 percent; previous company experience/references, 25 percent; resumes, 20 percent; and approach to tailoring, 10 percent.

Six proposals were submitted in response to the RFP and initially were evaluated for technical merit without consideration of price. Out of a maximum technical score of 800, the awardee, Essential Resources, Incorporated (ERI),

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received 572 points, while SIMCO received 516.50. Another offeror was rejected as "nonresponsive" and the remaining offerors received technical scores of 493.25, 325.75, and 308.75, respectively.

The RFP advised offerors that there would be a maximum of 12 students per class and listed a minimum and maximum number of classes for each course. Each offeror was required to propose fixed unit prices on a "per class" basis for the 14 line items. The line items represented seven pairs of computer courses and the student documentation therefor.

The contracting officer apparently determined that the two lowest technically scored offerors had offered prices for the seven line items of documentation that were "totally unrealistic." That is, he apparently thought these two offerors had quoted on a "per student" basis rather than on a "per class" basis. Inexplicably, the contracting officer accounted for this discrepancy by multiplying all offerors' student documentation prices by 12, the maximum number of students per class, rather than just adjusting the documentation prices of the two offerors in question. This adjustment distorted the offerors' actual prices. For example, since SIMCO offered "per class" prices for each of the seven student documentation sets in accordance with the RFP, its offered price was evaluated highest of all offers, inasmuch as its correct "per class" price was erroneously multiplied by 12. ERI, which offered a fixed price for only one line item of documentation and "\$0" for the remaining documentation line items was evaluated as having the lowest price<sup>1/</sup>. ERI then received a maximum score of 200 points to bring its total score to 772 points, while SIMCO and the other offerors received zero points for cost.<sup>2/</sup>

Without holding discussions, USDA awarded the contract to ERI as high aggregate scorer.

SIMCO protested that USDA miscalculated its prices for student documentation and requested that the technically qualified offerors be reevaluated to determine the

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<sup>1/</sup> ERI apparently included the price for the other six documentation line item prices in the appropriate paired course line items.

<sup>2/</sup> The facts concerning the cost evaluation are as stated by SIMCO. The documentation of record supports SIMCO's story, which has not been rebutted by USDA.

successful offeror.<sup>3/</sup> In its report, the USDA responds that the solicitation was ambiguous because the "cost evaluation and award procedures did not clearly delineate how cost proposals would be evaluated and scored and what criteria the award decision would be based upon." As a remedy, USDA proposes to terminate ERI's contract for the convenience of the government, amend the RFP to clearly outline cost and award criteria, reevaluate offers submitted in response to the amendment, and award the contract on the basis of the new criteria.

In response, SIMCO contends that the solicitation is not ambiguous and contends that it is entitled to award of the contract. SIMCO's claim to award is based upon its contention that the two lowest technically scored offerors should be rejected as technically unacceptable. SIMCO's evaluated price would then be low under a correct calculation of the prices. SIMCO claims it would then be entitled to receive 200 points in the cost evaluation while the other offerors would receive 0 points. This would give SIMCO the high aggregate point score, which it states would entitle it to award.

We agree with SIMCO that the solicitation is unambiguous and that its student documentation costs were miscalculated by USDA. The RFP is clear: "per-class," not "per-student" costs were solicited; price was to have a 20 percent evaluation weight; and award was to be made to the offeror with the highest aggregate total of cost and technical points. USDA has not specified any particular ambiguity in the RFP nor was SIMCO's proposal ambiguous as to price. Rather, USDA's price evaluation was clearly defective, since it ignored both the RFP and the offerors' proposals.

However, for a number of reasons, we are unable to agree that SIMCO is entitled to award. First, SIMCO's hypothesis that the two lowest scored offerors are unacceptable is not supported by the record. Therefore, the proposed scenario under which SIMCO would have the lowest evaluated price collapses.

Second, even assuming SIMCO was the low offeror, it was an error for USDA to award all 200 cost evaluation points to the low offeror and 0 points to all others, regardless of

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<sup>3/</sup> SIMCO also contends that all offers should include the price of Digital Equipment Corporation manuals as part of the student documentation costs. Since an amendment to the RFP makes clear that offerors are not required to furnish these manuals, we find SIMCO's contention to be without merit.

the prices offered. Procuring agencies do not have the discretion to announce in a solicitation that one evaluation plan will be used and then follow another in the actual evaluation, unless all offerors are notified of the change. Columbia Research Corp., 61 Comp. Gen. 194, 201 (1982), 82-1 CPD ¶ 8. Awarding maximum points to the low offeror and 0 points to all others is inconsistent with the RFP statement that cost proposals would comprise 20 percent of the total evaluation. See, e.g., Group Operations, Inc., 55 Comp. Gen. 1315 (1976), 76-2 CPD ¶ 79 (a cost evaluation formula had the effect of awarding nearly equal scores, making cost a negligible factor instead of 20 percent weight stated in RFP); Weather Science Inc., 53 Comp. Gen. 253 (1973) (formula which awarded 0 points to the highest cost offeror, regardless of dollar amount, was inconsistent with the stated cost evaluation weight of 40 percent); W.S. Gookin & Associates, B-188474, Aug. 25, 1977, 77-2 CPD ¶ 146 (evaluation approach, which gave equal scores to all cost proposals, regardless of disparity in prices, had the effect of eliminating cost as an evaluation factor). By so awarding points, USDA gave inordinate weight to price for the low offeror and no weight for the remaining offerors' prices. This produced a result which is misleading and inconsistent with the stated evaluation factors. Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978), 78-1 CPD ¶ 79; GP Taurio, Inc., B-222564, July 22, 1986, 86-2 CPD ¶ 90.

Third, USDA was required to conduct discussions before awarding the contract since there was no provision in the RFP notifying offerors that award could be made without discussions. Under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253a(b)(2)(B)(i) (Supp. III 1985), solicitations for competitive proposals are required to include "a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors." See Federal Acquisition Regulation (FAR) § 15.407(d)(4) (FAC 84-16) (which requires inclusion of a contract clause (FAR § 52.215-16 (FAC 84-17)) in accordance with this CICA provision). An award on the basis of initial proposals, without discussions, is proper only where this notice is provided in the RFP. See Advance Gear & Machine Corp., B-228002, Nov. 25, 1987, 87-2 CPD ¶ 519.

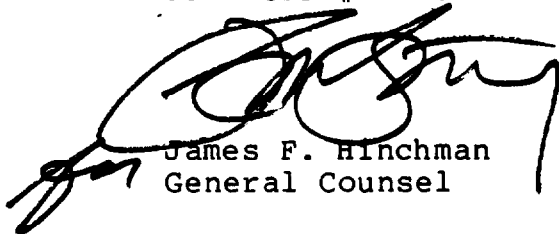
Further, even if the RFP had provided the appropriate notice, CICA also provides that award can be made without discussions only when it can be clearly demonstrated that award would result in the lowest overall cost to the government. 41 U.S.C. § 253(d)(1)(B) (Supp. III 1985). In view of USDA's miscalculation of SIMCO's and other offerors'

documentation prices, it is apparent that ERI was not the lowest-priced offeror considering only cost and cost related factors listed in the RFP. Since at least one lower-priced acceptable offer would be in the competitive range, USDA was prohibited from accepting ERI's initial proposal. Pan Am Support Services, Inc.--Request for Reconsideration, B-225964.2, May 14, 1987, 87-1 CPD ¶ 512.

Consequently, we do not agree that SIMCO is entitled to the award and deny the protest.

However, as discussed above, even though the RFP was unambiguous, there are a number of other procurement deficiencies that require the reopening of discussions with all offerors whose proposals are within the competitive range and receipt of best and final offers. This is basically the action that has been proposed by USDA, which also has proposed to clarify the cost evaluation scheme. We are uncertain what clarifications of the cost evaluation scheme are intended. However, whatever method is adopted should not include the deficient "all or none" price evaluation scheme.

SIMCO also has requested reimbursement of its proposal and protest costs. Since SIMCO will be given the opportunity to compete for the award, it is not entitled to such costs. Galveston Houston Co., B-219488.4, Nov. 4, 1985, 85-2 CPD ¶ 519; The Hamilton Tool Co., B-218260.4, Aug. 6, 1985, 85-2 CPD ¶ 132.



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